

HOUSE BILL No. 1436

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-28-3.

Synopsis: Subcontractor liens. Provides that a subcontractor, to acquire a lien, must provide notice of lien rights to a homeowner or the builder of a new home not later than two business days after the labor is performed. Provides that a contractor must pay all subcontractors within two business days after receiving payment from a homeowner or builder. Provides that a builder must disclose to a purchaser all subcontractors used in the construction of a new home. Requires a contractor to provide notice to all subcontractors when the contractor has been paid by the homeowner or builder.

Effective: July 1, 2005.

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January 25, 2005, read first time and referred to Committee on Judiciary.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1436

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-28-3-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) **Subject to**
3 **section 9.7 of this chapter**, a contractor, a subcontractor, a mechanic,
4 a lessor leasing construction and other equipment and tools, whether or
5 not an operator is also provided by the lessor, a journeyman, a laborer,
6 or any other person performing labor or furnishing materials or
7 machinery, including the leasing of equipment or tools, for:

8 (1) the erection, alteration, repair, or removal of:

9 (A) a house, mill, manufactory, or other building; or

10 (B) a bridge, reservoir, system of waterworks, or other
11 structure;

12 (2) the construction, alteration, repair, or removal of a walk or
13 sidewalk located on the land or bordering the land, a stile, a well,
14 a drain, a drainage ditch, a sewer, or a cistern; or

15 (3) any other earth moving operation;

16 may have a lien as set forth in this section.

17 (b) A person described in subsection (a) may have a lien separately



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or jointly upon the:

(1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) ~~on the~~ interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

(1) machinery;

(2) tools;

(3) stock;

(4) material; or

(5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract

(1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);

(3) for the construction, alteration, or repair of property that is:

(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

(iii) joint agency (as defined in IC 8-1-2.2-2);

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- 1 (iv) rural electric membership corporation formed under
 2 IC 8-1-13-4;
 3 (v) rural telephone cooperative corporation formed under
 4 IC 8-1-17; or
 5 (vi) not-for-profit utility (as defined in IC 8-1-2-125);
 6 regulated under IC 8; and
 7 (B) intended to be used and useful for the production,
 8 transmission, delivery, or furnishing of heat, light, water,
 9 telecommunications services, or power to the public; or
 10 (4) to prepare property for Class 2 residential construction;
 11 may include a provision or stipulation in the contract of the owner and
 12 principal contractor that a lien may not attach to the real estate,
 13 building, structure or any other improvement of the owner.
 14 (f) A contract containing a provision or stipulation described in
 15 subsection (e) must meet the requirements of this subsection to be valid
 16 against subcontractors, mechanics, journeymen, laborers, or persons
 17 performing labor upon or furnishing materials or machinery for the
 18 property or improvement of the owner. The contract must:
 19 (1) be in writing;
 20 (2) contain specific reference by legal description of the real
 21 estate to be improved;
 22 (3) be acknowledged as provided in the case of deeds; and
 23 (4) be filed and recorded in the recorder's office of the county in
 24 which the real estate, building, structure, or other improvement is
 25 situated not more than five (5) days after the date of execution of
 26 the contract.
 27 A contract containing a provision or stipulation described in subsection
 28 (e) does not affect a lien for labor, material, or machinery supplied
 29 before the filing of the contract with the recorder.
 30 (g) Upon the filing of a contract under subsection (f), the recorder
 31 shall:
 32 (1) record the contract at length in the order of the time it was
 33 received in books provided by the recorder for that purpose;
 34 (2) index the contract in the name of the:
 35 (A) contractor; and
 36 (B) owner;
 37 in books kept for that purpose; and
 38 (3) collect a fee for recording the contract as is provided for the
 39 recording of deeds and mortgages.
 40 (h) A person, firm, partnership, limited liability company, or
 41 corporation that sells or furnishes on credit any material, labor, or
 42 machinery for the alteration or repair of an owner occupied single or

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double family dwelling or the appurtenances or additions to the dwelling to:

- (1) a contractor, subcontractor, mechanic; or
- (2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than ~~thirty~~ **(30) two (2) business** days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

- (1) furnish the owner of the real estate:
 - (A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or
 - (B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than ~~sixty (60)~~ **two (2) business** days after the date of the first delivery or labor performed; and

- (2) file a copy of the written notice in the recorder's office of the county not later than ~~sixty (60)~~ **two (2) business** days after the date of the first delivery or labor performed.

(j) The furnishing and filing of the notice **of lien rights under subsection (h) or (i)** is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(k) A copy of the notice of lien rights furnished under subsection (h) or (i) must list:

- (1) the name and address of the:
 - (A) property owner;
 - (B) subcontractor; and
 - (C) contractor; and
- (2) a description of the:
 - (A) material;

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1 **(B) labor; or**

2 **(C) machinery;**

3 **used for the alteration or repair of the owner's property.**

4 ~~(j)~~ **(I)** A lien for material or labor in original construction does not
5 attach to real estate purchased by an innocent purchaser for value
6 without notice of a single or double family dwelling for occupancy by
7 the purchaser unless notice of intention to hold the lien is recorded
8 under section 3 of this chapter before recording the deed by which the
9 purchaser takes title.

10 SECTION 2. IC 32-28-3-3 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as
12 provided in subsection (b), a person who wishes to acquire a lien upon
13 property, whether the claim is due or not, must file in duplicate a sworn
14 statement and notice of the person's intention to hold a lien upon the
15 property for the amount of the claim:

16 (1) in the recorder's office of the county; and

17 (2) not later than ninety (90) days after performing labor or
18 furnishing materials or machinery described in section 1 of this
19 chapter.

20 The statement and notice of intention to hold a lien may be verified and
21 filed on behalf of a client by an attorney registered with the clerk of the
22 supreme court as an attorney in good standing under the requirements
23 of the supreme court.

24 (b) This subsection applies to a person that performs labor or
25 furnishes materials or machinery described in section 1 of this chapter
26 related to a Class 2 structure (as defined in IC 22-12-1-5) or an
27 improvement on the same real estate auxiliary to a Class 2 structure (as
28 defined in IC 22-12-1-5). A person who wishes to acquire a lien upon
29 property, whether the claim is due or not, must file in duplicate a sworn
30 statement and notice of the person's intention to hold a lien upon the
31 property for the amount of the claim:

32 (1) in the recorder's office of the county; and

33 (2) not later than ~~sixty (60)~~ **two (2) business** days after
34 performing labor or furnishing materials or machinery described
35 in section 1 of this chapter.

36 The statement and notice of intention to hold a lien may be verified and
37 filed on behalf of a client by an attorney registered with the clerk of the
38 supreme court as an attorney in good standing under the requirements
39 of the supreme court.

40 (c) A statement and notice of intention to hold a lien filed under this
41 section must specifically set forth:

42 (1) the amount claimed;

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- (2) the name and address of the claimant;
 - (3) the owner's:
 - (A) name; and
 - (B) latest address as shown on the property tax records of the county; and
 - (4) the:
 - (A) legal description; and
 - (B) street and number, if any;
- of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks, or other structure may stand or be connected with or to which it may be removed.

The name of the owner and legal description of the lot or land will be sufficient if they are substantially as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor at the time of filing of the notice of intention to hold a lien.

(d) The recorder shall:

- (1) mail, first class, one (1) of the duplicates of the statement and notice of intention to hold a lien to the owner named in the statement and notice not later than three (3) business days after recordation;
- (2) post records as to the date of the mailing; and
- (3) collect a fee of two dollars (\$2) from the lien claimant for each statement and notice that is mailed.

The statement and notice shall be addressed to the latest address of the owner as specifically set out in the sworn statement and notice of the person intending to hold a lien upon the property.

SECTION 3. IC 32-28-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) **Subject to section 9.7 of this chapter**, this section applies to a:

- (1) subcontractor;
- (2) lessor leasing construction and other equipment and tools, regardless of whether an operator is also provided by the lessor;
- (3) journeyman; or
- (4) laborer;

employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery for these activities.

(b) Except as provided in section 12 of this chapter, in order to

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acquire and hold a lien, a person described in subsection (a) must give to the property owner, or if the property owner is absent, to the property owner's agent, written notice particularly setting forth the amount of the person's claim and services rendered for which:

(1) the person's employer or lessee is indebted to the person; and

(2) the person holds the property owner responsible.

(c) Subject to subsections (d) and (e), the property owner is liable for the person's claim.

(d) The property owner is liable to a person described in subsection (a) for not more than the amount that is due and may later become due from the owner to the employer or lessee.

(e) A person described in subsection (a) may recover the amount of the person's claim if, after the amounts of other claims that have priority are subtracted from the amount due from the property owner to the employer or lessee, the remainder of the amount due from the property owner to the employer or lessee is sufficient to pay the amount of the person's claim.

(f) This section applies to a person described in subsection (a) who gives written notice, to the property owner or, if the property owner is absent, to the owner's agent, before labor is performed or materials or machinery is furnished. The notice must particularly set forth the amount of:

(1) labor the person has contracted to perform; or

(2) materials or machinery the person has contracted to furnish; for the employer or lessee in erecting, altering, repairing, or removing any of the buildings or other structures described in subsection (a). A person described in subsection (a) has the same rights and remedies against the property owner for the amount of the labor performed by the person or materials or machinery furnished by the person after the notice is given, as are provided in this chapter for persons who serve notice after performing the labor or furnishing the materials or machinery.

(g) If an action is brought against a property owner under this section, all subcontractors, equipment lessors leasing equipment, journeymen, and laborers who have:

(1) performed labor or furnished materials or machinery; and

(2) given notice under this section;

may become parties to the action. If, upon final judgment against the property owner the amount recovered and collected is not sufficient to pay the claimants in full, the amount recovered and collected shall be divided among the claimants pro rata.

SECTION 4. IC 32-28-3-9.3 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9.3. (a) This section applies to the:**

- (1) construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);**
- (2) construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); and**
- (3) preparation of property for Class 2 residential construction;**

that begins on or after July 1, 2005.

(b) As used in this section, "subcontractor" means an individual, a partnership, a firm, a limited liability company, a corporation, or another person to whom a contractor sublets part of a contract.

(c) A contractor shall pay a subcontractor for all work and materials used:

- (1) in the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);**
- (2) in the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); and**
- (3) to prepare property for Class 2 residential construction; not later than two (2) business days after the contractor receives payment for the contract.**

(d) A subcontractor may file an action against the prime contractor to recover any unpaid claims due under a contract between the prime contractor and the subcontractor if the prime contractor fails to pay the subcontractor as described in subsection (c).

(e) An action under subsection (d) may be filed in a circuit or superior court with jurisdiction in the county where the property for which the subcontractor provided work or materials is located.

SECTION 5. IC 32-28-3-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9.5. (a) As used in this section, "builder" means a person who constructs new homes for sale, including the construction of new homes on land owned by home buyers.**

(b) As used in this section, "closing" means a transfer of an interest described in a new home by a deed, installment sales contract, or lease.

(c) As used in this section, "lender" refers to:

- (1) an individual;**

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(2) a supervised financial organization (as defined in IC 24-4.5-1-301);

(3) an insurance company or a pension fund; or

(4) any other entity that has the authority to make loans.

(d) As used in this section and section 9.7 of this chapter, "subcontractor" means an individual, a partnership, a firm, a limited liability company, a corporation, or another person to whom a contractor sublets part of a contract.

(e) Before closing, a builder shall disclose to a person purchasing a new home all subcontractors used in constructing the home.

(f) Except as provided in subsection (g), before closing, a builder shall provide proof to the:

(1) person purchasing the new home; and

(2) lender of the person described in subdivision (1);

that all subcontractors used in the construction of the home have been paid in full.

(g) If a builder cannot prove that all subcontractors used in the construction of the home have been paid in full, the lender of the person purchasing the home may hold funds owed to any subcontractor. The lender may pay the subcontractor with the funds or must reimburse the builder if the builder provides proof the a subcontractor has been paid.

SECTION 6. IC 32-28-3-9.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9.7. (a) This section applies to:

(1) construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); and

(3) preparation of property for Class 2 residential construction;

that begins on or after July 1, 2005.

(b) A contractor must provide notice to each subcontractor used in work described in subsection (a) that the contractor has received the full payment for the contract the subcontractor was employed under not later than one (1) business day after receiving the payment.

(c) A contractor must pay a subcontractor the amount due to the subcontractor not later than two (2) business days after giving the subcontractor the notice required under subsection (b).

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1 (d) If a subcontractor places a lien on a property because the
2 subcontractor has not been timely paid under subsection (c), the
3 owner of the property subject to the lien may bring an action
4 against the contractor to require the contractor to pay the
5 subcontractor. In an action under this subsection, the property
6 owner may be awarded costs, including all court and attorney's
7 fees.

8 (e) An action under subsection (d) may be filed in a circuit or
9 superior court with jurisdiction in the county where the property
10 for which the subcontractor provided work or materials is located.

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